



KITTITAS COUNTY
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision

For Ecology Use Only	
Received:	<div>DEPT OF ECOLOGY Date Received JUN 21 2012 CENTRAL REGION OFFICE</div>
Reviewed by:	
Date Reviewed:	

Applicant: George and Diane Burchak.

Application Number: KITT-11-10

This record of decision was made by a majority of the board at an open public meeting of the Kittitas County Water Conservancy Board held on June 19, 2012.

☐ **Approval:** The (board name) Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on June 19, 2012 and submits this record of decision and report of examination to the Department of Ecology for final review.

☐ **Denial:** The (board name) Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on June 19, 2012 and submits this record of decision to the Department of Ecology for final review.

Signed:

Dugg Hall
Dugg Hall [print name], Chair
Kittitas County Water Conservancy Board

Date: 6/19/12

Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other _____

Lenny Morrison
Lenny Morrison [print name]
[title]
Kittitas County Water Conservancy Board

Date: 6-19-12

Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other _____

Chad Baur
Chad Baur [print name]
[title]
Kittitas County Water Conservancy Board

Date: 6-19-12

Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other _____

[print name]
[title]
Kittitas County Water Conservancy Board

Date: _____

Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other _____

[print name]
[title]
Kittitas County Water Conservancy Board

Date: _____

Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other _____

Mailed to the Department of Ecology Central Regional Office of Ecology, and other interested parties on _____.

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

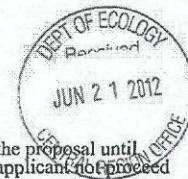
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040-105(03/03)

Record of Decision No. (WR Change App Number)



Kittitas County
WATER CONSERVANCY BOARD
Application for Change/Transfer
OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF
THE STATE OF WASHINGTON



Report of Examination

NOTE TO APPLICANT: Pursuant to WAC 173-153-130(8), the applicant is not permitted to proceed to act on the proposal until Ecology makes a final decision affirming, in whole or in part, the Board's recommendation. It is advised that the applicant not proceed until the appeal period of Ecology's decision is complete.

NOTE TO AUTHOR: Read the instructions for completing a water conservancy board report of examination. Use the F11 key to move through the form.

<input checked="" type="checkbox"/> Surface Water	<input type="checkbox"/> Ground Water		
DATE APPLICATION RECEIVED September 20, 2011	WATER RIGHT DOCUMENT NUMBER (i.e., claim, permit, certificate, etc.) Claim No. 05216	WATER RIGHT PRIORITY DATE August 1, 1887	BOARD-ASSIGNED CHANGE APPLICATION NUMBER Kitt 11-10

NAME George and Diane Burchak			
ADDRESS (STREET) 1941 Mohar Road	(CITY) Cle Elum	(STATE) WA	(ZIP CODE) 98922

Changes Proposed: ☐ Change purpose ☒ Add purpose ☐ Add irrigated acres ☐ Change point of diversion/withdrawal

☐ Add point of diversion/withdrawal ☒ Change place of use ☒ Other (Temporary, Trust, Interties, etc.) Instream flow
donation to trust/water banking under Chapter 90.38 RCW

SEPA
The Board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☒ Exempt ☐ Not exempt

BACKGROUND AND DECISION SUMMARY

Existing Right (Tentative Determination)

MAXIMUM CUB FT/SECOND (1) 1.97 cfs (2) 0.02 cfs (3) 0.01 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR (1) 720 (2) 2 (3) 2	TYPE OF USE, PERIOD OF USE (1) Irrigation of 60 acres from April 1 through October 31 (2) Domestic supply, continuously (3) Stock water, continuously			
SOURCE Iron Mountain Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River			
AT A POINT LOCATED: PARCEL NO.	¼ SW	¼ NE	SECTION 9	TOWNSHIP N. 19 N	RANGE 15 E.W.M.	WRIA COUNTY Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED W½ SE¼ and NE¼ SE¼ of Section 4, T. 19 N., R. 15 E.W.M.						
PARCEL NO.	¼	¼ SE	SECTION 4	TOWNSHIP N. 19 N	RANGE 15 E.W.M.	

Proposed Use

MAXIMUM CUB FT/SECOND (1) 1.64 cfs (2) 0.33 cfs (3) 0.02 cfs (4) 0.01 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR (1) 600 (2) 120 (3) 2 (4) 2	TYPE OF USE, PERIOD OF USE (1) Irrigation of 50 acres from April 1 through October 31 (2) Instream flow to create a trust water right for water banking purposes from April 1 through October 31 (3) Domestic supply, continuously (4) Stock water, continuously			
SOURCE Iron Mountain Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River			
AT A POINT LOCATED: PARCEL NO.	¼ SW	¼ NE	SECTION 9	TOWNSHIP N. 19 N	RANGE 15 E.W.M.	WRIA COUNTY Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED Irrigation of 50 Acres, domestic supply and stock water: W½ SE¼ and NE¼ SE¼ of Section 4, T. 19 N., R. 15 E.W.M. Instream flow for water banking: See, "Proposed project plans and specifications," below.						
PARCEL NO.	¼	¼	SECTION 4	TOWNSHIP N. 19 N	RANGE 15 E.W.M.	

Board's Decision on the Application

MAXIMUM CUB FT/ SECOND		MAXIMUM GAL/MINUTE		MAXIMUM ACRE-FT/YR		TYPE OF USE, PERIOD OF USE	
(1) April: 1.64 cfs May: 1.64 cfs June: 1.61 cfs July: 1.27 cfs Aug: 1.45 cfs Sept: 1.60 cfs Oct: 1.64 cfs				(1) 600		(1) Irrigation of 50 acres from April 1 through October 31	
(2) April: 0.33 cfs May: 0.33 cfs June: 0.36 cfs July: 0.70 cfs Aug: 0.52 cfs Sept: 0.37 cfs Oct: 0.33 cfs				(2) 120		(2) Instream flow to create a trust water right for water banking purposes from April 1 through October 31	
(3) 0.02 cfs				(3) 2		(3) Domestic supply, continuously	
(4) 0.01 cfs				(4) 2		(4) Stock water, continuously	
SOURCE Iron Mountain Creek				TRIBUTARY OF (IF SURFACE WATER) Yakima River			
AT A POINT LOCATED: PARCEL NO.		¼ SW	¼ NE	SECTION 9	TOWNSHIP N. 19 N	RANGE 15 E.W.M.	WRIA COUNTY. Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED							
<u>Irrigation of 50 Acres, domestic supply and stock water:</u> W½ SE¼ and NE¼ SE¼ of Section 4, T. 19 N., R. 15 E.W.M. <u>Instream flow for water banking:</u> See, "Proposed project plans and specifications," below.							
PARCEL NO.	¼	¼	SECTION 4	TOWNSHIP N. 19 N	RANGE, 15 E.W.M.		

DESCRIPTION OF PROPOSED WORKS

This application (KIT-11-10) involves the change in place of use and purpose of use of the irrigation portion of the water right that was confirmed in *Ecology v. Acquavella* in Subbasin No. 5 under Court Claim No. 05216. The water right as confirmed is described in the Background section below. The application seeks to split the irrigation portion of the water right that is the subject of this application into an irrigation right and an instream flow right. The applicant applied to change the purpose of use of .33 cfs, 120 acre-feet per year of the water right from irrigation of ten (10) acres to instream flow to create a trust water right for future water banking and other trust purposes. The application did not seek to change the place of use, point of diversion or purpose of use of the remaining portion of the water right used for the irrigation of 50 acres within the existing place of use as described above. The application also does not seek to change the quantity, place of use, point of diversion or purpose of use of the portion of the water right used for domestic supply and stock-water as described above.

The portion of the water right that will be used for water banking purposes as noted above will be subject to a Trust Water Right Agreement that will control the specifics of how, when, where and in what quantities the portion of the water right can be used for water banking purposes. Until water is removed from the water bank it will remain in trust and be used for instream flow purposes in Iron Mountain Creek downstream to Iron Mountain Creek's confluence with Tillman Creek and in Tillman Creek to the confluence of Tillman Creek and the Yakima River. The water the applicant seeks to place in trust is equal to the amount of water necessary to irrigate ten (10) acres. To avoid impairment (See "CONCLUSIONS," below), 10 acres of the place of use will be permanently fallowed (see "Conditions and limitations," below). In fact, the amount of water necessary to irrigate 10 acres will require more than .33 cfs to be left instream and not diverted. (See "Other" under "INVESTIGATION," below).

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: At least 75 days after Board's ROD issuance	COMPLETE PROJECT BY THIS DATE: 12/31/2013	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: 12/31/2015
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REPORT

NOTE TO AUTHOR: This form reflects the minimum regulatory requirements as required in WAC 173-153-130(6). In accordance with WAC 173-153-130(5), "It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." Completion solely of the minimum regulatory requirements may not constitute a fully documented decision.

BACKGROUND [See WAC 173-153-130(6)(a)]

On September 20, 2011 George and Diane Burchak of Cle Elum, Washington filed an application for change to change the place of use, purpose of use of a portion of their water right and to create an instream flow right for water banking purposes of a portion of the irrigation portion of the water right confirmed in *Department of Ecology v. Acquavella*, Yakima County Superior Court Cause No. 77-2-01484-5 ("*Acquavella*"), Court Claim No. 05216 (hereinafter referred to as the "Water Right"). The application was accepted at an open public meeting on September 20, 2011, and the Board assigned application number KITT-11-10.

On January 17, 2012, the Board issued a Record of Decision and Report of Examination, approving the instream flow trust donation under the parameters discussed above and forwarded the application to Ecology's Central Region Water Resources staff for review and final decision. On or about February 23, 2012, Ecology received comments from Mentor Law Group, PLLC. Likewise, Ecology questioned whether the Board had sufficiently addressed the question of annual consumptive quantity ("ACQ") attributable to irrigation acreage to be fallowed under the application. (See, "COMMENT AND PROTESTS," below.) In order to adequately address deficiencies under the ROE and in light of the short time frame remaining under Ecology's statutory review period, the Board elected to withdraw its earlier issued ROD/ROE for further consideration of the subject application.

The Burchaks have occupied the property to which this water right is appurtenant since 1965. In 2004 the Burchaks caused Chuck Cruse, a surveyor, to segregate the property that is the place of use of this water right. Mr. Cruse segregated the property into three parcels that are delineated on a survey that was recorded on the 18th day of June, 2004 at Book 30 of Surveys at pages 77-78 under Kittitas County Auditor's File No. 200406180014. A true and correct copy of that survey is attached as Exhibit A to Exhibit 6 hereto. As depicted on the survey, Parcel 6 is 94.99 acres, Parcel 8 is 12 acres and Parcel 7 is 12 acres.

In 2005 the Burchaks had Parcel 7 further divided into four three-acre parcels referred to as the Burchak Short Plat. That was accomplished by a short plat recorded on May 9, 2005, at Book H of Short Plats at page 56 under Kittitas County Auditor's File No. 200505090030. A true and correct copy of the Burchak Short Plat is attached as Exhibit B to Exhibit 6 hereto. Lot 7 has not historically been irrigated. When the Burchak Short Plat is compared to the air photo taken on June 23, 2006 (a true and correct copy of which is attached as Exhibit C to Exhibit 6 hereto) and the air photo taken on June 25, 2009 (a true and correct copy of which is attached as Exhibit D to Exhibit 6 hereto), it is clear that Lot 7 is all property with timber on it and has not been historically irrigated. After the Burchaks completed the Burchak Short Plat, they sold Lot 7A and 7B to third parties. The Burchaks still own Lots 7C and 7D. Even though that area with lots 7A, 7B, 7C and 7D is within the authorized place of use, water has never been applied to those lots. All of the water has been applied to Parcels 6 and 8.

The property has historically been irrigated from Iron Mountain Creek. As the Burchaks' water right confirms, the Burchaks use water to irrigate 60 acres within parcels 6 and 8, which total 106.99 acres. Thus, there are approximately 46.99 acres within the place of use that are not irrigated. This non-irrigated land consists primarily of timber, a small farmstead and two ponds that are on the property. The Burchaks have historically diverted water from Iron Mountain Creek at the authorized point of diversion, conveyed it down the hill and irrigated their property, using a system of open ditches and gated irrigation pipe. Exhibit C to Exhibit 6 hereto depicts the property in June of 2006. The Burchaks were irrigating the property at that time with water from Iron Mountain Creek. Exhibit D to Exhibit 6 hereto depicts the property in June of 2009. Again, the Burchaks were irrigating the property at that time with water from Iron Mountain Creek.

The flows in Iron Mountain Creek vary depending upon the time of year and amount of snow pack in the mountains. In some years there is more flow in Iron Mountain Creek than in other years. A rectangular weir and measuring device was recently installed in Iron Mountain Creek, which may produce more accurate data concerning stream flows throughout the year, including during the irrigation season, commencing in 2012. Typically, the Burchaks take the water they are entitled to through their diversion and they irrigate specific parts of the place of use at one time, moving the water across the property in a rotation. The southern edge of the Burchaks' property is encumbered by the Bonneville Power Administration transmission line easement ("BPA Easement") that is identified on the 2004 survey (Exhibit A to Exhibit 6 hereto). At the southern boundary of the property there is a field road that does not show up very well on an aerial photo. The approximate location of the field road is marked on Exhibit E to Exhibit 6 hereto. The Burchaks own and irrigate property to the north of the field road. This is the property the Burchaks will fallow if the application is approved.

If this water right transfer is granted, the Burchaks intend to fallow 10 acres on the southern edge of the property within the BPA Easement right of way.

Attributes of the water right as currently documented

Name on certificate, claim, permit: George Burchak & Diane Burchak

Water right document number: Court Claim No. 05216

As modified by certificate of change number: N/A

Priority date, first use: August 1, 1887

Water quantities: 1.97 cfs, 720 acre-feet per year for irrigation;
0.02 cfs, 2 acre-feet per year for domestic supply;
0.01 cfs, 2 acre-feet per year for stock water

Source: Iron Mountain Creek

Continued

Point of diversion/withdrawal: 325 feet north and 450 feet east of the center of Section 9, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section, 9, T. 19 N., R. 15 E.W.M.

Purpose of use: Irrigation of 60 acres, stock water and domestic supply for two residences

Period of use: April 1 through October 31 for irrigation and continuously for domestic supply and stock water

Place of use: W $\frac{1}{2}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 19 N., R. 15 E.W.M.

Existing provisions

The water right and the place of use are located in upper Kittitas County. Ecology adopted a rule for managing underground water resources in upper Kittitas County on December 22, 2010, which rule became effective 31 days later on January 22, 2011. As a result of the rule, new unmitigated groundwater withdrawals are precluded until more is known about the aquifers in the upper county and how they interact with surface water tributaries and the Yakima River. Ecology determined that new unmitigated withdrawals are likely to deplete an over-committed water supply and that depletion of the over-committed water supply could impair senior water right holders and be harmful to the water-dependent economy and fish runs. One solution is for water users to obtain coverage under a senior water right. Development may then proceed where water withdrawals are mitigated with a senior water right mitigating new uses. Water supplies will remain intact during years of drought when other unmitigated water use may be limited or completely curtailed. New developments whose water use is supported by mitigation from senior rights will be of greater value than those not supported by mitigation. One of the ways landowners may obtain a share of a permanent senior water right is through water banking programs serving upper Kittitas County. Water rights obtained through water banking programs are put into trust and the water remains instream to offset any groundwater pumping associated with new uses. More information about the Upper Kittitas County Water Exchange is available online at: <http://www.ecy.wa.gov/programs/wr/cwp/wtrchgng.html>. Obtaining a water-budget-neutral determination or coverage under a water right that predates May 10, 1905, protects groundwater withdrawals from curtailment in times of water shortage.

Tentative determination of the water right

The tentative determination is provided on the front page of this report.

History of water use

The water right is subject to *Department of Ecology v. Acquavella*, Yakima County Superior Court Cause No. 77-2-01484-5 ("Acquavella"). The water is diverted from Iron Mountain Creek, which is in Subbasin 5 of the *Acquavella* water rights adjudication. Subbasin 5 had a Conditional Final Order ("CFO") entered on February 8, 2001. The water is delivered to the place of use via a ditch and pipe system from the point of diversion from Iron Mountain Creek. The diversion was modified in 2011 to add control devices and a rectangular weir to measure water. For additional discussion of the property, see "BACKGROUND," above.

Previous changes

Since determination in *Acquavella*, there have been no prior changes to this water right.

SEPA

The Board has reviewed the proposed project in its entirety. This project is categorically exempt from the State Environmental Policy Act under WAC 197-11-800(4) because it involves the use of less than 1 cubic feet per second (cfs) of surface water.

Other

Prior to the Board's January 17, 2012, public meeting and initial determination on this application, the Applicant presented the proposed transfer to the Water Transfer Working Group ("WTWG"). The WTWG concluded that the transfer meets the criteria for transfer and recommended approval so long as the consumptive use was not increased. (See, "INVESTIGATION" and "Water Use and Estimate Consumptive Amounts" below.) The WTWG made it clear the approval was only for the transfer into trust and not for future withdrawals from the trust. Future withdrawals from trust will need to be brought before the WTWG. The WTWG generally viewed the transfer as having a positive effect on instream flows in the Iron Mountain-Tillman Creek drainage.

The information or conclusions in this section were authored and/or developed by Applicant's attorneys.

COMMENT AND PROTESTS [See WAC 173-153-130(6)(b)]

Public notice of the application was given in the Northern Kittitas County Tribune on October 6, 2011 and October 13, 2011. Protest period ended on November 12, 2011.

There were no protests or comments received during the 30 day protest period. In addition, no oral and written comments were received at an open public meeting of the Board or other means as designated by the Board prior to issuance of the January 17, 2012 initial determination.

In connection with Ecology's subsequent review of the Board's decision, Mentor Law Group, PLLC submitted comments. In summary, Mentor's comments concerning the Board's ROE were as follows:

- The ROE identified two "primary reaches" to be benefitted by the instream flow trust donation, i.e., both Iron Mountain Creek to its confluence with Tillman Creek and Tillman Creek to its confluence with the mainstem Yakima River, rather than defining a single primary reach between the original diversion point and the point where the last return flows under the out-of-stream use reenter the river system.
- Seasonal availability of water was not sufficiently addressed, insofar as Iron Mountain Creek flows are acknowledged to vary from year-to-year. And in connection therewith, the ROE did not contain sufficient express requirements re instream flow monitoring/measuring.

Likewise, Ecology, through John Kirk, questioned whether the Board's instream flow/trust calculations should have incorporated a full ACQ analysis, which, by definition, requires consideration of actual, metered or measured diversion data for the five-year period preceding the proposed change. In this instance, and in the absence of such data, the Board's initial ROE estimated the consumptive use quantity attributable to fallowed acreage based upon applicable crop irrigation requirements established by the Washington Irrigation Guide.

The information or conclusions in this section were authored and/or developed by Applicant's attorneys.

INVESTIGATION [Sec WAC 173-153-130(6)(c)]

The following information was obtained from a site inspection conducted by Board member Lenny Morrison on September 23, 2011, the exhibits attached hereto, air photos and conversations with the applicant and/or other interested parties.

Proposed project plans and specifications

The results of the proposed transfer would be to split the irrigation portion of the water right into two rights, one for irrigation and one for instream flow for water banking purposes. This application has no impact or effect on the portions of the water right used for domestic supply and stock water and those portions of the water right will continue to be used consistent with the water right as confirmed. The right legally described on Exhibit 1 (hereinafter the "Instream Flow Right") will have the purpose of use designated as instream flow for water banking purposes and will be managed pursuant to a trust agreement with Ecology, which will authorize the portion of the water designated on Exhibit 1 to be used for water banking purposes. The Instream Flow Right will have a primary reach and secondary reach to be determined thusly:

Primary Reach – The portion of Iron Mountain Creek, commencing at Applicant's current point of diversion, and downstream creeks or rivers deemed to benefit from *both* irrigation consumptive use and return flow waters associated therewith under the subject water right.

Secondary Reach – Commencing at the point where all return flows under Applicant's irrigation purpose of use have reentered the creek or river, i.e., the portion of the river system that benefits *only* from the consumptive irrigation portion of the subject water right.

In consultation with Ecology, the Board has determined that final identification of primary and secondary reaches under the Instream Flow Right will be more appropriately addressed in connection with consideration of future applications for mitigated Water Bank rights.

The Instream Flow Right will be placed instream and used for water banking purposes. The Instream Flow Right will ultimately be used and allocated pursuant to a Trust Water Right Agreement between the water right owners and the Washington State Department of Ecology ("Ecology"). The terms and conditions of the Trust Water Right Agreement are beyond the statutory jurisdiction of the Board. The terms and conditions of the Trust Water Right Agreement will be established pursuant to a separate process between the owner of the water right and Ecology.

Other water rights appurtenant to the property (if applicable)

There are no other water rights appurtenant to the property.

Public Interest (groundwater only)

The proposed transfer is not subject to RCW 90.44.100. However, this change application, if approved as an instream flow right, will increase flows from the historic point of diversion downstream. The Water Resources Act of 1971 (Chapter 90.54 RCW) was enacted to provide strategic means of "providing and securing sufficient water to meet the needs of people, farms and fish". Protecting stream flows in the amounts identified in this report is anticipated to improve fish habitat in Iron Mountain Creek. Additionally, the Instream Flow Right will provide mitigation water for new domestic uses in an area of Kittitas County where use of other water rights to provide mitigation for new domestic uses is very difficult. The proposed changes to the water right are in the public interest.

Tentative Determination

In order to make a water right change decision, the Board must make a tentative determination on the validity and extent of the right. The Board has made the tentative determination as displayed upon the first page of this report. There are several circumstances that can cause the Board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent

Continued

to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings:

The Board reviewed: (1) a June 2, 2003 air photo (see Exhibit 2 hereto); (2) a July 31, 2005 air photo (see Exhibit 3 hereto); (3) a June 30, 2006 air photo (see Exhibit 4 hereto); (4) a June 25, 2009 air photo (see Exhibit 5 hereto); (5) the testimony of George Burchak by affidavit together with Exhibits A-E (see Exhibit 6 hereto); the following map (see Exhibit 7 hereto); and (6) the site visit. While there is now a measuring device in place at the point of diversion, the water use has not been historically metered or measured. The measuring device is new and while in place in 2011 was only used for part of the season.

Based upon the evidence presented the Board believes that the water right has been fully used since the CFO was entered in the amounts set forth in the Board's Tentative Determination on page 1.

Geologic, Hydrogeologic, or other scientific investigations (if applicable)

The Board notes that Iron Mountain Creek flows into Tillman Creek and Tillman Creek goes under the Kittitas Reclamation District (IRD) canal and then into the Yakima River. The Board concluded that there were no other surface diversions between the point of diversion and the confluence of Tillman Creek and the Yakima River. Thus, water left in Iron Mountain Creek will ultimately flow into the Yakima River.

Water Use and Estimated Consumptive Amounts:

When a change to enable an additional purpose of use under a water right (including an instream flow trust donation) is proposed, application of the Annual Consumptive Quantity ("ACQ") test is required. RCW 90.03.380. ACQ requires averaging of the two highest years of consumptive use under the existing purpose of use during the preceding five-year period. Nevertheless, "Ecology frequently must estimate or determine irrigation efficiency ...when evaluating trust water applications..." Ecology GUID-1210 (Determining Irrigation Efficiency and Consumptive Use), at p.1. As such, in this case and in order for the Board to render a determination on the application, consumptive use may be estimated as provided in GUID-1210, to wit:

Consumptive use per acre should be calculated as the total irrigation requirement (TIR) times the percent evaporation (%EVAP) plus the crop irrigation requirement (CIR). Multiplying by the irrigated acreage gives us the total consumptive use, as follows:

$$CU = (TIR \times \%EVAP + CIR) \times \text{Acreage}$$

The TIR for the Water Right, based on full use of the water right as confirmed in *Acquavella*, is 720 acre-feet for irrigation of 60 acres, resulting in a TIR of about 12 acre-feet per year per acre (afy/acre).

A CIR for pasture grass/turf of 18.11 inches (1.51 afy/acre or 90.6 afy) was calculated using the Washington Irrigation Guide for pasture grass/turf crop located in the vicinity of Cle Elum, Washington (WIG Appendix B-25a).

The property is irrigated predominately using flood irrigation with some sprinklers, for which GUID-1210 recommends a %EVAP of 5 percent.

Applying these values, consumptive use associated with irrigation use under this right is estimated as:

$$CU = (12.00 \text{ afy/acre} \times .05 + 1.51 \text{ afy/acre}) \times 60 \text{ acres} = 126.60 \text{ acre-feet per year}$$

This equates to a consumptive use per acre of approximately 2.1 afy/acre.

Before the Instream Flow Right can be used for water banking purposes, the acreage irrigated with the consumptive use associated with the Instream Flow Right will need to be fallowed. Without fallowing acreage associated with the Instream Flow Right, use of water for water banking purposes would result in an expansion of the water right and a detrimental effect on Total Water Supply Available ("TWSA"). The acreage to be fallowed (10 acres) within the authorized place of use is depicted on Exhibit 7 hereto. Under the Board's consumptive use estimate, above, the fallowing of 10 acres results in 21 acre-feet per year of consumptive use and 99 acre-feet per year of nonconsumptive use.

Other

The Qi calculations for use of the instream flow right are based on the consumptive use, as determined by the Washington Irrigation Guide. The table below indicates the quantity necessary to ensure the consumptive and nonconsumptive use associated with the 10 acres to be fallowed is not diverted and is instead left instream.

Court Claim 05216 Trust Water Right Calculations

Month	Irrigation Calculations				Trust Calculations	
	CIR in Inches	TIR in Inches	TIR in ac-ft	CU in ac-ft	cfs - Primary Reach	cfs - Secondary Reach
January	0.00	0.00	0.00	0.00	0	0
February	0.00	0.00	0.00	0.00	0	0
March	0.00	0.00	0.00	0.00	0	0
April	0.00	0.00	0.00	0.00	0	0
May	0.00	0.00	0.00	0.00	0	0
June	3.34	26.56	22.13	3.89	0.36	0.06
July	6.51	51.72	43.10	7.58	0.70	0.12
August	4.80	38.13	31.77	5.58	0.52	0.09
September	3.47	27.59	22.99	4.04	0.37	0.07
October	0.00	0.00	0.00	0.00	0	0
November	0.00	0.00	0.00	0.00	0	0
December	0.00	0.00	0.00	0.00	0	0
Total	18.11	144.00	120.00	21.1	---	---

Location: Cle Elum
 Acres Fallowed: 10
 Crop: Pasture/turf
 Irrigation Method: Flood
 Application Efficiency: 13%
 Evaporation: 5%

Notes:
 CIR - Crop Irrigation Requirement
 TIR - Total Irrigation Requirement, equals CIR/Application Efficiency
 CU - Consumptive use, equals TIR*(Application Efficiency + Evaporation)
 Estimated crop irrigation requirements and irrigation efficiencies are from the Washington Irrigation Guide and Ecology Guidance 121C
 cfs - cubic feet per second

Thus, under the Board's consumptive use estimate, in order to ensure that use of the subject water right is not enlarged, the quantity not diverted and left instream (hereafter, the "Combined Instream Quantity") is estimated to be as follows:

	<u>cfs Primary Reach</u>	<u>cfs Secondary Reach</u>
April	.33	.0
May	.33	.0
June	.36	.06
July	.70	.12
August	.52	.09
September	.37	.07
October	.33	.0

Note: the above Combined Instream Quantity calculations, which are based on *estimated* consumptive use, are being used to establish a provisional Instream Flow Right for purpose of the Board's determination herein. These calculations may be adjusted up or down, however, in connection with review of future applications for mitigated Water Bank rights. At such times, irrigation efficiency (Ea) and consumptive use under Applicant's irrigation purpose of use shall be determined on the basis of metered or measured diversion data.

$$Ea = CIR / \text{Total Water Use}$$

As shown above, during peak months, the Combined Instream Quantity will exceed .33 cfs. See, "Conditions and limitations," below. This will decrease the instantaneous amounts available for the irrigation of the place of use associated with the irrigation right. Under the Board's consumptive use estimate (and contingent upon confirmed availability of water at Applicant's point of diversion), the instantaneous quantities available for the irrigation right are therefore estimated to be as follows:

April	1.64
May	1.64
June	1.61
July	1.27
August	1.45
September	1.60
October	1.64

The information or conclusions in this section were authored and/or developed by Applicant's attorneys.

CONCLUSIONS [See WAC 173-153-130(6)(d)]

Tentative determination (validity and extent of the right)

Continued

Court Claim No. 05216 is appurtenant to the subject property. Review of the evidence provided within this report and proceedings within the Yakima River Basin Adjudication Court indicate that a total of 60 acres have been historically and beneficially used under Court Claim No. 05216.

In accordance with Chapter 90.38 RCW, the Board makes a tentative determination that Court Claim No. 05216 represents a valid water right authorized to divert up to 1.97 cfs from April 1 through October 31, up to 720 acre-feet/yr from Iron Mountain Creek.

Approval of this change of purpose of use to instream flow will not impair existing water rights so long as the requirement to fallow as discussed above is imposed. Thus, the Board has imposed a condition to fallow 10 acres as set forth below.

Creating an instream flow right allowed under Chapter 90.38 RCW is not contrary to the public interest.

Relinquishment or abandonment concerns:

The Board has determined that no part of the water right has been relinquished or abandoned.

Hydraulic analysis:

See above.

Consideration of comments and protests:

As set forth above, the Board has considered comments and protests. (See, p. 4-5, above.) Said comments and protests were addressed through technical guidance requests to Ecology's Central Region Water Resources personnel. The Board has incorporated such guidance in its revised determination, herein.

Impairment

Impairment Considerations

Under RCW 90.38.040(5)(a), an instream flow right may be exercised only if it does not impair existing rights. The instantaneous quantities described above from April 1 to October 31 of water are proposed to become the Instream Flow Right specifically for instream flow purposes within Iron Mountain Creek. By no longer diverting this water from April 1 to October 31 from Iron Mountain Creek, that portion of the right will remain instream, subject to hydrogeologic conditions. The intent is to increase flow downstream of the historic point of diversion. Using the water right for instream flow purposes will increase flows from the historic point of diversion downstream. As such, there will be no impairment of any water rights as a result of instream flow uses. (See also, the "INVESTIGATION" and "Water Use and Estimated Consumptive Amounts" and "Other" sections, above.)

TWSA

TWSA stands for the Total Water Supply Available and is comprised of the entire Yakima River basin outflow. Some TWSA water comes from artificial storage, used to fulfill Bureau of Reclamations contracted rights. Each Bureau of Reclamation user has an assigned amount each year, which is their proportion of the TWSA. A measuring point of TWSA is at Parker, Washington, located downstream of Union Gap, Washington.

Under the Board's consumptive use estimate, above, so long as the 10 acres are fallowed as discussed above, the use of the Instream Flow Right for water banking purposes will not have a negative impact on TWSA. Until the Instream Flow Right is fully used for water banking purposes the Instream Flow Right will not be diverted and the consumptive use associated with the water used to irrigate 10 acres will remain instream. Thus, until full use of the Instream Flow Right for water banking purposes occurs, TWSA will be enhanced because the consumptive use associated with the Instream Flow Right will remain instream and not be used for irrigation.

Public Interest

See the Board's discussion of the public interest above.

Other

The Board also considered the previous provisions associated with the Water Right as identified in the "Background" section of this report when making its decision.

DECISION [See WAC 173-153-130(6)(e)]

See "Board's Decision on the Application" section on page 2, above.

The information or conclusions in this section were authored and/or developed by counsel for Applicant.

PROVISIONS [See WAC 173-153-130(6)(f)]

Conditions and limitations

1. With the purpose of use of the water being changed from irrigation to instream flow no portion of the water that is designated for instream flow may be diverted from the historic point of diversion. Future use of the instream flow right will be controlled through a trust water right agreement with the Department of Ecology.
2. This authorization shall not excuse the applicant from compliance with any applicable federal, state or local statutes, ordinances, or regulations, including those administered by other programs of Ecology and/or the Washington State Department of Fish and Wildlife.
3. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions and to inspect at reasonable times any measuring device used to meet the above conditions.
4. Under the Board's consumptive use estimate, above, in order to avoid an increase in consumptive use and a decrease in TWSA 10 acres must be fallowed and not irrigated with water from any source. The 10 acres to be fallowed as a result of the creation of the Instream Flow Right will be within the area identified on the following map attached as Exhibit 7 hereto.
5. The remaining portion of the water right not transferred (Irrigation of 50 Acres, domestic supply and stock water as set forth in the Board's Decision on the Application herein) shall follow the provisions listed in the Report of Referee dated July 8, 1997, Supplemental Report of Referee dated May 10, 1999 and the Conditional Final Order for Subbasin 5 (Elk Heights) within *Acquavella*, unless superseded by a Final Decree or such other superseding document.
6. The portion of Court Claim No. 05216 that is not transferred shall comply with Order No. 77-2-01-01484-5 Requiring Metering, Measuring, and Reporting Requirements, all Subbasins (1-31) in Benton, Kittitas, and Yakima Counties entered September 15, 2005 in *Acquavella*. The order may be viewed at the following website: <http://www.ecy.wa.gov/programs/wr/measuring/images/pdf/order772014845.pdf>. Furthermore, future applications for mitigated Water Bank rights will be contingent upon availability of water at Applicant's Iron Mountain Creek point of diversion at levels meeting or exceeding the Combined Instream Quantity, to be measured and reported as herein provided.
7. Use of water under mitigated Water Bank rights shall take priority over Applicant's continuing out-of-stream irrigation purpose of use, with the latter use (up to a maximum 1.64 cfs) to be limited to flows that exceed the Combined Instream Quantity, as confirmed under the herein measuring and reporting requirements.

Mitigation (if applicable)

Not applicable.

Construction Schedule

There will be no construction necessary or associated with the transfer to instream flow purposes for water banking purposes and therefore no construction schedule is necessary. The applicant intends to cease diversion upon approval by Ecology.

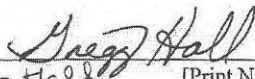
Other

None.

The information or conclusions in this section were authored and/or developed by Applicant's attorneys.

The undersigned Board commissioner certifies that he/she understands the Board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the Board's evaluation process, are thoroughly evaluated and discussed in the Board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that he/she, having reviewed the report of examination, knows and understands the content of this report and concurs with the report's conclusions.

Signed at Ellensburg, Washington
This 19th day of June, 2012



Gregg Hall [Print Name], Board Representative
Kittitas County Water Conservancy Board

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